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13 April 1988 OCA 88-1158

MEMORANDUM FOR: EA/DI

EA/DS&T C/ICA/OGC

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FROM:

Legislation Division

Office of Congressional Affairs

SUBJECT:

Commercial Space Launch Act Amendments of

1987, H.R. 3765

- 1. Attached for your review and comment is a copy of the above-captioned bill. It aims to facilitate commercial access to space.
- 2. The bill is scheduled for markup in the immediate future. While it appears to me to pose no problems for the Agency, I would appreciate your apprising me of any which I have not discerned as soon as possible. You may telephone me with your comments

Attachment

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OCA/LEG

(13 April 1988)

Distribution:

Original - Addressees

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STAT

100TH CONGRESS 1ST SESSION

H.R.3765

I

To facilitate commercial access to space, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 15, 1987

Mr. Nelson of Florida (for himself, Mr. Roe, Mr. Lujan, Mr. Walker, Mr. Brown of California, Mr. Lewis of Florida, Mr. Volkmer, Mr. Packard, Mr. Hall of Texas, Mr. Henry, Mr. McCurdy, Mr. Slaughter of Virginia, Mr. Mineta, Mrs. Morella, Mr. Mackay, Mr. Torricelli, Mr. Chapman, Mr. Nowak, Mr. Perkins, Mr. Nagle, Mr. Skaggs, and Mr. Lagomarsino) introduced the following bill; which was referred to the Committee on Science, Space, and Technology

A BILL

To facilitate commercial access to space, and for other purposes.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 SECTION 1. SHORT TITLE; FINDINGS.
- 4 (a) This Act may be cited as the "Commercial Space
- 5 Launch Act Amendments of 1987".
- 6 (b) The Congress finds that—
- 7 (1) a United States space launch industry is an es-
- 8 sential component of national efforts to assure access
- 9 to space for Government and commercial users;

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1	(2) the Federal Government should encourage, fa-
2	cilitate, and promote the use of the United States
3	space launch industry in order to continue United
4	States aerospace preeminence;
5	(3) the United States space launch industry must
6	be competitive in the international marketplace;
7	(4) Federal Government policies should recognize
8	the responsibility of the United States under interna-
9	tional treaty for activities conducted by United States
10	citizens in space; and
1	' (5) the United States must maintain a competitive
12	edge in international commercial space transportation
13	by ensuring continued research in launch vehicle com-
14	ponent technology and development.
15	SEC. 2. RESPONSIBILITIES UNDER COMMERCIAL SPACE
16	LAUNCH ACT.
17	Section 5(a)(1) of the Commercial Space Launch Act
18	(49 U.S.C. App. 2604(a)(1)) is amended to read as follows:
19	"(1) encourage and facilitate commercial space
20	launches by the private sector, consistent with the
21	space policies of the United States as established in
22	public law; and".
23	SEC. 3. DEFINITION OF DIRECT COSTS.
24	(a) Section 15(b)(1) of the Commercial Space Launch
25	Act (49 U.S.C. App. 2614(b)) is amended by inserting at the

- 1 end the following: "For purposes of this paragraph, the term
- 2 'direct costs' means the costs incurred by the United States
- 3 as a result of an acquisition of launch property or launch
- 4 services which exceed the costs that would have been in-
- 5 curred if such acquisition had not occurred.".
- 6 (b) Section 15(a) of the Commercial Space Launch Act
- 7 (49 U.S.C. App. 2614(a)) is amended by adding at the end
- 8 the following new sentence: "The Secretary shall not take
- 9 such actions if substantially equivalent launch property or
- 10 services are otherwise commercially available from a domes-
- 11 tic source on reasonable terms and conditions.".
- 12 SEC. 4. INSURANCE REQUIREMENTS OF LICENSEE.
- 13 (a) Section 16 of the Commercial Space Launch Act (49
- 14 U.S.C. App. 2615) is amended by striking "Sec. 16." and all
- 15 that follows through "other appropriate agencies." and in-
- 16 serting in lieu thereof the following:
- 17 "Sec. 16. (a)(1)(A) Each license issued or transferred
- 18 under this Act shall require the licensee—
- 19 "(i) to obtain liability insurance; or
- 20 "(ii) to demonstrate financial responsibility
- 21 in an amount sufficient to compensate the maximum probable
- 22 loss from claims against any party by a person or entity,
- 23 other than the licensee or a contractor, subcontractor, or cus-
- 24 tomer of the licensee involved in providing the launch serv-
- 25 ices, for death, bodily injury, or loss of or damage to property

Ţ	resulting from activities carried out under the license. In no
2	event shall a licensee be required to obtain liability insurance
3	or demonstrate financial responsibility under this subpara-
4	graph in an amount which exceeds \$500,000,000.
5	"(B) Each license issued or transferred under this Act
6	shall require the licensee—
7	"(i) to obtain insurance; or
8	"(ii) to demonstrate financial responsibility
9	in an amount sufficient to compensate the maximum probable
10	loss from claims against any party by the United States for
11	loss of or damage to property of the United States resulting
12	from activities carried out under the license. In no event shall
13	a licensee be required to obtain insurance or demonstrate fi-
14	nancial responsibility under this subparagraph in an amount
15	which exceeds \$100,000,000.
16	"(C) Each license issued or transferred under this Act
17	shall require the licensee to—
18	"(i) enter into reciprocal waivers of claims; or
19	"(ii) obtain insurance,
20	in a manner and to an extent satisfactory to the Secretary,
21	and consistent with this section, with respect to claims by the
22	licensee or a contractor, subcontractor, or customer of the
23	licensee, or by a contractor or subcontractor of such custom-
24	er, involved in providing the launch services, for death, bodily

- 1 injury, or loss of or damage to property resulting from activi-
- 2 ties carried out under the license.
- 3 "(D) The Secretary, on behalf of the United States, may
- 4 enter into reciprocal waivers of claims with respect to claims
- 5 for death, bodily injury, or loss of or damage to property
- 6 resulting from activities carried out under a license issued or
- 7 transferred under this Act.
- 8 "(2) Any insurance policy obtained pursuant to a re-
- 9 quirement described in paragraph (1) shall name the United
- 10 States and all contractors, subcontractors, and customers of
- 11 the licensee, and all contractors and subcontractors of such
- 12 customers, involved in providing the launch services as in-
- 13 sured parties, to the extent of their potential liabilities, at no
- 14 cost to the United States.
- 15 "(3) The Secretary shall determine the maximum prob-
- 16 able loss associated with activities under a license within 90
- 17 days after a licensee has requested such a determination and
- 18 has submitted all information the Secretary requires to make
- 19 such a determination. The Secretary shall amend such deter-
- 20 mination as warranted by new information.
- 21 "(4) The Secretary shall, once every 3 years after the
- 22 date of the enactment of the Commercial Space Launch Act
- 23 Amendments of 1987, review the amounts specified in the
- 24 last sentence of subparagraphs (A) and (B) of paragraph (1),
- 25 and shall submit a report to the Congress which contains a

1	proposed adjustment to such amounts to conform with altered
2	liability expectations. Such proposed adjustment shall take
3	effect 30 days after the submission of such report.
4	"(b)(1) The Secretary shall provide for the payment of
5	successful claims (including reasonable expenses of litigation
6	or settlement) against the licensee, or any contractor, subcon-
7	tractor, or customer of the licensee, or any contractor or sub-
8	contractor of such customer, involved in providing launch
9	services undertaken pursuant to a license under this Act, by
10	a party other than—
11	"(A) the United States;
12	"(B) the licensee; or
13	"(C) a contractor, subcontractor, or customer of
14	the licensee, or a contractor or subcontractor of such
15	customer, involved in providing the launch services,
16	for death, bodily injury, or loss of or damage to property
17	resulting from activities carried out under the license, but
18	only to the extent that such claims are not compensated by
19	insurance, including self-insurance pursuant to subsection
20	(a)(1)(A)(ii). This paragraph shall not apply to claims result-
21	ing from the willful misconduct of such parties.
22	"(2) Payment of claims under paragraph (1) shall be
2 3	subject to—
24	"(A) notice to the United States of any claim or
25	suit against a party described in paragraph (1) for

1	death, bodily injury, or loss of or damage to property;
2	and
3	"(B) control of or assistance in the defense by the
4	United States, at its election, of that claim or suit.
5	"(3) The Secretary may withhold payment under para-
6	graph (1) if the Secretary certifies that the amount is not just
7	and reasonable.
8	"(4) The Secretary shall make payments under para-
9	graph (1) in accordance with section 1304 of title 31, United
10	States Code.".
11	(b) Section 15(c) of the Commercial Space Launch (49
12	U.S.C. App. 2614(c)) is amended to read as follows:
13	"(c) The Secretary may establish requirements for proof
14	of financial responsibility and such other assurances as may
15	be necessary to protect the United States and its agencies
16	and personnel from liability, loss, or injury as a result of a
17	launch or operation of a launch site involving Government
18	facilities or personnel. The Secretary may not under this sub-
19	section relieve the United States of liability for damage or
20	injury resulting from negligence or intentional misconduct of
21	the United States or its agents.".
22	SEC. 5. UNITED STATES LAUNCH INCENTIVES FOR CERTAIN
23	SATELLITES.
24	(a)(1) Except as otherwise provided in this subsection,
25	the Secretary of Transportation shall act as insurer for any

- 1 launch involving an eligible satellite in the amount required,
- 2 pursuant to section 16(a)(1) (A) and (B) of the Commercial
- 3 Space Launch Act, for activities under a license issued under
- 4 such Act.
- 5 (2) The Administrator of the National Aeronautics and
- 6 Space Administration shall, upon application of the owner of
- 7 an eligible satellite, determine the amount such owner would
- 8 have been required to pay for liability insurance for third
- 9 party claims for the launch of such satellite under the terms
- 10 of the launch services agreement or contract referred to in
- 11 subsection (c).
- 12 (3) The owner of an eligible satellite shall be responsible
- 13 for obtaining insurance required pursuant to section 16(a)(1)
- 14 (A) and (B) of the Commercial Space Launch Act in an
- 15 amount equal to the amount determined under paragraph (2)
- 16 of this subsection, adjusted for inflation with respect to the
- 17 period between the time insurance would have been required
- 18 to be obtained as described in paragraph (2) and the time
- 19 insurance is required to be obtained pursuant to section
- 20 16(a)(1) (A) and (B) of the Commercial Space Launch Act.
- 21 (b) The Secretary of Transportation, with the coopera-
- 22 tion of the Secretary of Defense and the Administrator of the
- 23 National Aeronautics and Space Administration, and in con-
- 24 sultation with, and after due consideration of the interests of,
- 25 the owners of eligible satellites, their launch providers, and

other customers of such launch providers, shall, wherever practicable, take steps to ensure that eligible satellites receive priority status for launch from United States launch 3 sites in the order in which such eligible satellites were manifested by the National Aeronautics and Space Administration 5 as of August 15, 1986. (c) The United States shall not require payment for the provision of launch property and launch services in connection with the launch of an eligible satellite. 9 (d) A satellite shall be eligible for the purposes of this 10 section if— 11 (1) it was under construction on August 15, 1986; 12 (2) an unperformed launch services agreement or 13 contract with the National Aeronautics and Space Ad-14 ministration was held with respect to it on August 15, 15 16 1986; and 17 (3) it is licensed for launch under the Commercial 18 Space Launch Act. 19 SEC. 6. PREEMPTION OF SATELLITES. Section 15(b) of the Commercial Space Launch Act (49 20U.S.C. App. 2614(b)) is amended by adding at the end the 2122 following new paragraph: "(5)(A) The Secretary of Transportation, with the coop-23eration of the Secretary of Defense and the Administrator of 24

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the National Aeronautics and Space Administration, shall

take steps to ensure that the launches of satellites with re-1 spect to which a launch date commitment from the United States has been obtained for a launch licensed under this Act 3 are not unreasonably preempted from access to United States launch sites or property except in cases of imperative nation-5 al need. "(B) The Secretary of Transportation shall include in any license issued under this Act a provision which establishes an amount of liquidated damages to be paid by the preempting agency of the United States in the event that a 10 satellite is preempted other than as provided in subparagraph 11 (A).". 12 SEC. 7. STUDY OF PROCESS FOR SCHEDULING LAUNCHES. The Secretary of Transportation, in cooperation with 14 the Secretary of Defense and the Administrator of the National Aeronautics and Space Administration, and in consul-16 tation with representatives of the space launch and satellite industry, shall study ways and means of scheduling Government and commercial payloads on commercial launch vehicles at government launch sites in a manner which-20 21 (1) optimizes the use of the launch property of the United States; and 22 23 (2) assures that the launch property of the United States that is available for commercial use will be 2425 available on a commercially reasonable basis,

- 1 consistent with the objectives of the Commercial Space
- 2 Launch Act. The Secretary shall submit the results of such
- 3 study to the Congress within 90 days after the date of the
- 4 enactment of this Act.
- 5 SEC. 8. COMMERCIAL SPACE LAUNCH SERVICE COMPETITION.
- 6 It is the sense of the Congress that the United States
- 7 should explore ways and means of developing a dialogue with
- 8 appropriate foreign government representatives to seek the
- 9 development of guidelines for access to launch services by
- 10 satellite builders and users in a manner that assures the con-
- 11 duct of reasonable and fair international competition in com-
- 12 mercial space activities.
- 13 SEC. 9. LAUNCH VEHICLE RESEARCH AND DEVELOPMENT
- 14 The Administrator of the National Aeronautics and
- 15 Space Administration shall design a program for the support
- 16 of research into launch systems component technologies, for
- 17 the purpose of developing higher performance and lower cost
- 18 United States launch vehicle technologies and systems avail-
- 19 able for the launch of commercial and Government spacecraft
- 20 into orbit. The Administrator shall submit a report outlining
- 21 such program to the Congress within 60 days after the date
- 22 of the enactment of this Act.

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- 1 SEC. 10. APPLICABILITY TO LICENSES.
- This Act, and the amendments made by this Act, shall
- 3 apply to all licenses issued under the Commercial Space
- 4 Launch Act before or after the date of the enactment of this
- 5 Act.

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